

TO:

Lynda Roberts, Registrar of Voters
3501 Civic Center Dr # 121 San Rafael CA 94903

Brian E. Washington, County Counsel
3501 Civic Center Dr # 275 San Rafael CA 94903-4257

DATE: November 28, 2018

RE: Demand to Not Certify Elections Due to Offenses Against the Elective Franchise

We are extremely disappointed that you did not respond to, much less heed, our notice of August 2, 2018 regarding conforming school measure ballots to the mandatory requirements of the Elections Code and the Education Code.

Non-Conforming Ballot Statements

By not conforming the ballot statements to the law, you have permitted the school and college districts (and other taxing agencies) to deceive the voters about the nature of the underlying measure. When the law is ignored, the measure itself, as you well know, is never referenced in the ballot statement. That is by design. Elections Code 13119(a), if applied as written, vanquishes that deception. In addition, the printed full text of the measure is separated from the sample ballot in the voter information guide by pages and pages of material and advertisements resulting in barely one in twenty voters recognizing that they are voting, not on a marketing question, but on a contractual obligation specified in the text of the measure.

The purpose of the legislature's mandatory requirements are to improve disclosure and end deception. Both of these are substantive and not merely procedural or directory in nature.

The legislature has determined that your printing and circulation of non-conforming ballot statements is an offense against the elective franchise and subject to criminal sanctions.

The following measures appear to or are likely to exceed the constitutional threshold for passage. Each ballot statement contains one or more points of non-conformance.

Measure I (Prop 39 bond) 63.35% (Passing)

To repair and modernize outdated classrooms and buildings, replace aging portables, upgrade infrastructure, construct new educational facilities, and improve access to technology, shall Shoreline Unified School District issue \$19.5 million in bonds at legal interest rates, with projected tax rates of 3.9¢ per \$100 of taxable value while bonds are outstanding (generating on average approximately \$1.45 million annually for issued bonds), and requiring citizens' oversight, annual audits and all funds spent to benefit Shoreline students and schools?

Non-conforming offenses for this ballot statement include:

- uses argumentative language - ELC 13119(c)[4]
- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- no duration of the tax to be levied - ELC 13119(b)[3]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- omission of maximum rate of interest - EDC 15122[3]

Measure J (parcel tax) 71.91% (Passing)

To protect high quality education with local funding that cannot be taken by the State, shall Tamalpais Union High School District attract and retain highly

qualified teachers, counselors and staff; provide excellent science, technology, engineering, math, reading /writing instruction; protect art /music programs; and maintain small class sizes by levying \$149 per parcel, providing \$5.1 million annually for 4 years, with senior exemptions, annual cost of living adjustments, independent citizens' oversight and all funds for local high school students?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

Measure L (transient occupancy tax) (Uncertain)

City of Sausalito Hotel Tax/Tourism Mitigation Measure. To address the effects of tourism by improving traffic enforcement for pedestrian, cyclist and driver safety; managing the number of bikes, buses, taxis; reinvesting in local businesses; and other essential city services, shall an ordinance raising the transient occupancy tax rate charged to hotel guests by 2% be adopted until ended by voters, providing additional \$300,000 annually, with independent audits, all funds used locally in Sausalito?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure M (business license tax) (Uncertain)

City of Sausalito Business Tax Equity Measure. To maintain city services, including police protection; fixing streets, sidewalks, and storm drains; supporting local businesses; and other general services, shall an ordinance simplifying Sausalito's business license ordinance for fairness to businesses of all sizes, be adopted until ended by voters, updating business license rates to \$125 per business and between \$1-\$3 per \$1,000 of gross receipts, generating approximately \$896,750 annually, requiring audits and all funds used locally?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure N (parcel tax) (Uncertain)

Shall the measure to continue for four more years the special tax for paramedic and/or emergency medical services at the existing annual amount of \$75 per residence and per 1,000 square feet of floor area for nonresidential uses for fiscal years 2019-2020 through 2022-2023, with

anticipated annual revenues of \$500,000, and with the appropriations limit increasing by the amount of the tax, be adopted?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]

Measure U (parcel tax) (Uncertain)

Southern Marin Fire Protection District Local Emergency Medical Response and Fire Protection Measure. To maintain local emergency medical/fire protection services; improve the ability to react to/contain wildland fires; attract/retain qualified professional paramedics and firefighters; and maintain high cardiac and stroke survivability standards and 9-1-1 fire response times; shall the Southern Marin Fire Protection District establish a \$200/annual parcel tax to protect local funding, providing \$3,000,000 annually, until ended by voters, with citizen oversight, independent audits, all funds staying local?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- use of title to create prejudice for the measure - ELC 13119(c)[4]
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Measure W (transient occupancy tax) (Uncertain)

To address tourism impacts on West Marin communities and paid only by guests, shall the measure be adopted to increase the transient occupancy tax in West Marin from 10% to 14% for hotels/short-term rentals, and to apply 4% tax to commercial campground visitors, to enhance fire/emergency services and long-term community housing, raising approximately \$1.3 million annually, with local oversight, annual audits, and all funds exclusively used for West Marin, effective until amended/repealed?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]
- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)

Measure AA (transactions and use tax) (Uncertain)

In order to relieve traffic congestion on Highway 101 and local roads; fix potholes/maintain local roads; improve interchanges/access to/from Highway 101; expand safe routes to schools, including school bus service/funding crossing guards; and, provide local transit, including options for seniors/persons with disabilities, shall Marin County renew the existing half-cent, voter approved sales tax without increasing the current rate, providing \$27,000,000 annually for 30 years, with citizens' oversight, that the State cannot take away?

Non-conforming offenses for this ballot statement include:

- benefits language to create prejudice for the measure - ELC 13119(c)[4]

- not in the form "Shall the measure (stating the nature thereof) be adopted?" - ELC 13119(a)
- objectively false or deceptive statement in synopsis - ELC 13119(c)[1]

Failure of Measures to Qualify Under the Requirements of Proposition 39

Beyond your willful failure to conform the ballot statements to the statutory requirements, you have failed to qualify the Proposition 39 measures themselves with respect to the constitutional requirements that the measures claim to avail themselves of, to wit:

1) prohibit the use of bond proceeds for any purpose, including salaries and operating costs, other than the construction, reconstruction, rehabilitation, and replacement of school facilities [Art. XIII A, Section 1(b)(3)(A)], and

2) present to the voters, before they vote, a list of the specific school facility projects to be funded by the proceeds. [Art. XIII A, Section 1(b)(3)(B)]

Each and every one of the measures contains language specifically intended to avoid the limitations as to the authorized uses of the bond proceeds.

Each and every one of the measures contains language specifically intended to expend bond proceeds on purposes other than construction of school facilities. Among the unauthorized purposes, the measures explicitly purport to authorize expenditures for administration and operating costs, notwithstanding the explicit prohibition of Proposition 39.

Each and every one of the measures contains language specifically intended to expand the project list to anything and everything under the sun, all to be determined at a later date.

Your failure to qualify Proposition 39 measures appearing on the ballot is, similarly, an offense against the elective franchise.

Impartial Analysis

The allegedly impartial analysis of measures in which county counsel is required to present independent, impartial legal opinions, is merely a regurgitation, often using direct quotations, of language from the measure itself or from the tax rate statement.

A reading of the analysis provides the voting public with no insight that is not already in the other materials in the voter information guide. The highlight of the analysis appears to be that "Yes" means "Yes" and "No" means "No." Woe to those without a top-notch public education who might be confused.

Moreover, county counsel fails to address the requirements of the Elections Code and, for school bond measures, the Education Code with respect to the ballot statement. County counsel also fails to address the language that purports to override the qualification restrictions with respect to Proposition 39 measures.

The effect of a wholly uncritical opinion is that those voters who read the Impartial Analysis are misled by a putatively authoritative source.

Conclusion

By allowing proponents to avoid mandatory disclosure requirements, no one can know, with any degree of certainty, what the will of the voters might have been had they been presented with an honest ballot containing all mandatory disclosures, containing no false or misleading statements, and containing no argumentative or prejudicial language.

As one state supreme court has held:

No one can say with any certainty what the vote of the electorate would have been if the voting public had been given the whole truth, as mandated by the statute, and had been told "the chief purpose of the measure."

Those who object to forced taxation through the fraudulent and unlawful ballot statements and

measures have been injured due to your foregoing willful failures to follow the law. The only adequate remedy for this total contempt and disregard of the laws enacted to guarantee a fair and impartial election process is that you not certify the elections identified above.

Sincerely,

Richard Michael
California School Bonds Clearinghouse

Alex Aliferis
Former Executive Director of Contra Costa Taxpayers Association

Bruce Boyer
Candidate for Sheriff, Ventura County

Bernadette Chenard-Hsing
Activist

Fred H. Crane
Taxpayer

Linda Davis
Advocate for Honest School Bonds

John A. Davison
Voting and Taxpayers Advocate

Alison Herson
Taxpayer in Allan Hancock College Joint Community College District

Dan Hilker
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Sandra Kallander
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Michael R. Kupperberg
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Miyo Prassas
Hermosa Beach Community Advocate

Michael Robertson
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Honor "Mimi" Robson
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Sally Smith
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Ludd A. Trozpek
California resident and citizen

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